

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

Hearing Examiner File:
MUP 21-016 (ECA, CU)

**MAGNOLIA COMMUNITY COUNCIL
AND OTHERS,**

Department Reference:
3028072-LU

from a decision issued by the Director,
Seattle Department of Construction
and Inspections.

**ORDER ON MCC’S
MOTION FOR
RECONSIDERATION/
CLARIFICATION**

1. Motion. Appellant Magnolia Community Council and Others (“MCC”) filed a Motion for Reconsideration/Clarification of the Hearing Examiner’s Decision and accompanying Declaration of Edward R. Coulson in Support of MCC’s Motion for Reconsideration/Clarification. The Motion requested clarification or reconsideration on Decision implementation. The specific question is whether the Examiner meant for a new, administratively appealable decision to issue. The Seattle Department of Construction and Inspections (“Department”) did not file a response. The Applicant filed a Response to MCC’s Motion for Reconsideration and MCC filed a Reply in Support of Motion for Reconsideration/Clarification.

2. Background. The Decision states, “[the] ECA CUP Decision is **UPHELD** in part and **REVERSED** in part.” Jurisdiction was not retained. The Decision affords discretion in how it is implemented. The Department could revise the Decision to add condition(s) or it may determine that with revised application materials, new conditions are unnecessary. Alternatively, both approaches might be used. MCC asked whether Decision implementation actions not resulting in MUP amendment effectively amend the MUP, making it administratively appealable. MCC claimed this was the correct result, the Applicant opposed, and the Department took no position.

3. Reconsideration. Hearing Examiner Rule 3.20 provides for reconsideration in the event of proceeding irregularity and the Examiner may clarify a Decision. The Motion requests clarification and raises a question on a potential proceeding irregularity. Due to the partial remand, the MUP appealed cannot be relied upon as a final approval. To secure approval, revision to either underlying application materials and/or revision to MUP text to add condition(s) is necessary. Regardless of whether MUP text changes, it will no longer be the same, or substantially the same, decision appealed. Thus, even if no new MUP

conditions prove necessary, MUP reissuance is required as the original decision is no longer the one appealed from.¹

ORDER

MCC's reconsideration motion is **GRANTED**.

Entered November 16, 2021.

/s/Susan Drummond
Susan Drummond, Deputy Hearing Examiner

¹ Such a reissuance would not open up the MUP in its entirety to appeal, only the portion which was reversed. The procedure here contrasts to situations where an Examiner decision clarifies a Department decision. Without a reversal, there is no need to reissue the decision appealed from. It is the reversal which triggers this action.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order on Motion for Reconsideration and Clarification** to each person listed below, or on the attached mailing list, in the matters of **MAGNOLIA COMMUNITY COUNCIL AND OTHERS**, Hearing Examiner Files: **MUP-21-016 (ECA, CU)** in the manner indicated.

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Dated: November 16, 2021

/s/ Galen Edlund-Cho
Galen Edlund-Cho
Legal Assistant